

REMARKS

This response to the the Office Action will follow the numbered paragraphs to the extent that they require a response.

2(c)(c). The withdrawal of the Section 103(a) rejection is acknowledged.

5. Claim 17 has been cancelled.

6. The objections to Claims 12 and 18 have been overcome by corrections.

7 and 8. Claim 14 has been cancelled.

9, 10, 11 and 12. The rejection of Claim 15, 17 and 18 under Section 102(b) and the rejection of Claims 14,15, 17 and 18 under Section 102(e) are, except for the new ground based on the product-by-process argument, the same as have been relied on in every Office Action since the first Office Action. Applicant repeats and relies on the same arguments of patentability as made in every Response since that made to the first Office Action.

In the Examiner's Final Rejection, at pages 3 and 4, lines 6-8, he stated with respect to the Section 102(b) and 102(e) rejections, that "In order to over come this rejection, further clarification in Claim 17 of how the amino group is substituted onto the "A" group is required".

Further at page 3, lines 9-12 and page 4, lines 10-13, the Examiner states that ---the features upon which applicant relies (i.e., a hyaluronic acid molecule which is cross-linked with another hyaluronic acid molecule) are not recited in the rejected claim(s).---

Numerous attempts have been made both by amendment and in telephone conference to clarify the claim language. In each instance, the attempt has simply been rejected outright with no explanation or assistance from the Examiner towards developing satisfactory language. In general, when patentability has been impliedly established, as in this case, it has been attorney for Applicant's experience that wording acceptable to both the Examiner and the Applicant can be found by a cooperative effort. That clearly has not been the case in this application.

A similar type of rejection has been made in Applicant's corresponding and companion Appl. Ser. No. 09/830,744. That rejection has been resolved through the Examiner's cooperation using language that has now been introduced into Claim 18 of this application. Applicant submits that there should be no reason why the same language should not resolve the same rejection in this application.

As to the new product-by-process argument relied on in each of the rejections, the Examiner's attention is directed to MPEP 706.03(e) which states that ---Where an Applicant's product is incapable of description by product claims that are of different scope, he is entitled to product-by-process claims that recite his novel process of manufacture---. The Examiner has made a similar statement at page 3, Para.9, line 11 and elsewhere in the Office Action. That the process steps are novel is impliedly acknowledged by the Examiner at pages 3 and 4, lines 6-8 of each, in the Final Rejection. Accordingly, Applicant submits that he

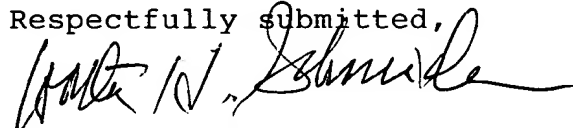
should not be denied the right to claim his product by the novel process steps by which it is produced.

For the various reasons presented, Applicant submits that Claims 12, 15 18 and 19 are patentable. A withdrawal of the rejections and an allowance of the claims is respectfully urged.

13. The Examiner has stated in Para. 2(C)(c) that the Section 103(a) rejection setforth in this Paragraph 13 has been withdrawn. Accordingly, it need not be responded to. Nevertheless, to avoid any question that Applicant has not been fully responsive, Applicant hereby reiterates his position setforth in previous Amendments regarding this rejection supplemented by the arguments setforth hereinabove.

An early action leading to the issuance of a Notice of Allowance is respectfully solicited.

Respectfully submitted,



Walter H. Schneider
Attorney of Record

Tel: 740-420-7378
Atty Dock: 1756